

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MUMIN SAHIB ABDULLAH,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-00568

MARTY C. ANDERSON, et al.,

Defendants.

MEMORANDUM OPINION

Pending before the Court is Defendant's Second Motion to Dismiss or in the Alternative, Motion for Summary Judgment [Docket 50]. By Standing Order entered on July 21, 2004, and filed in this case on July 14, 2005, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge VanDervort filed a PF&R on March 2, 2007 [Docket 38]. In that filing, the magistrate judge recommended that this Court grant in part and deny in part Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment [Docket 26], grant Plaintiff's Motion to Amend his Complaint [Docket 36], and refer this matter back to the magistrate judge for further proceedings. By a Memorandum Opinion and Order dated March 22, 2007, the Court adopted the recommendations contained in the first PF&R.

Magistrate Judge VanDervort filed a second PF&R on August 14, 2008 [Docket 57]. In that filing, the magistrate judge recommended that this Court grant Defendants' Second Motion to Dismiss, or in the alternative, Motion for Summary Judgment [Docket 50].

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and any party's right to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by August 29, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). To date, no objections have been filed.

Having reviewed the PF&R filed by Magistrate Judge VanDervort, the Court **ADOPTS** the recommendations contained therein. Accordingly, the Court hereby **GRANTS** Defendants' Second Motion to Dismiss, or in the alternative, Motion for Summary Judgment [Docket 50], **DISMISSES** Plaintiff's Complaint as amended [Dockets 1 and 40], and removes this matter from the Court's docket. A separate Judgment Order will enter this day implementing the rulings contained herein.

ENTER: September 2, 2008

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE